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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2017-031071

**Alyn Gary Anderson, M.D.,
17822 Beach Boulevard, Ste. 166
Huntington Beach, CA 92647**

A C C U S A T I O N

**Physician's and Surgeon's
Certificate No. A 25674,**

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 24, 1973, the Board issued Physician's and Surgeon's Certificate No. A 25674 to Alyn Gary Anderson, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“...”

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“...”

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1 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent
2 acts or omissions. An initial negligent act or omission followed by a separate and distinct
3 departure from the applicable standard of care shall constitute repeated negligent acts.

4 “(1) An initial negligent diagnosis followed by an act or omission medically
5 appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

6 “(2) When the standard of care requires a change in the diagnosis, act, or omission
7 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
8 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs
9 from the applicable standard of care, each departure constitutes a separate and distinct
10 breach of the standard of care.

11 “...”

12 6. Section 2266 of the Code states:

13 “The failure of a physician and surgeon to maintain adequate and accurate records
14 relating to the provision of services to their patients constitutes unprofessional conduct.”

15 7. Section 2241.5 of the Code states:

16 “(a) A physician and surgeon may prescribe for, or dispense or administer to, a person
17 under his or her treatment for a medical condition dangerous drugs or prescription
18 controlled substances for the treatment of pain or a condition causing pain, including, but
19 not limited to, intractable pain.

20 “(b) No physician and surgeon shall be subject to disciplinary action for prescribing,
21 dispensing, or administering dangerous drugs or prescription controlled substances in
22 accordance with this section.

23 “(c) This section shall not affect the power of the board to take any action described
24 in Section 2227 against a physician and surgeon who does any of the following:

25 “(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence,
26 repeated negligent acts, or incompetence.

27 “...”

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1 “(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation
2 of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section
3 11210) of Division 10 of the Health and Safety Code.

4 “(d) A physician and surgeon shall exercise reasonable care in determining whether a
5 particular patient or condition, or the complexity of a patient’s treatment, including, but not
6 limited to, a current or recent pattern of drug abuse, requires consultation with, or referral
7 to, a more qualified specialist.

8 “...”

9 8. Section 4021 of the Code states:

10 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with
11 Section 11053) of Division 10 of the Health and Safety Code.”

12 9. Section 4022 of the Code states:

13 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-
14 use in humans or animals, and includes the following:

15 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
16 without prescription,’ ‘Rx only,’ or words of similar import.

17 “...”

18 “(c) Any other drug or device that by federal or state law can be lawfully dispensed
19 only on prescription or furnished pursuant to Section 4006.”

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Repeated Negligent Acts)**

22 10. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
23 by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his
24 care and treatment of Patient A,¹ as more particularly alleged hereinafter:

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27 _____
28 ¹ “Patient A” is used to protect the patient’s privacy.

1 11. Respondent was the primary care physician of Patient A from 2008 through
2 approximately February 23, 2013 ("the treatment period").²

3 12. During the treatment period, Patient A also saw a psychiatrist and a pain management
4 physician from time to time. However, respondent was the main prescriber of Patient A's
5 medications.

6 13. A CURES³ report, shows that from at least on or about November 29, 2010, through
7 the end of the treatment period, respondent routinely prescribed to Patient A a combination of
8 Hydrocodone Bitartrate Acetaminophen⁴ (at least six (6) 325mg/10mg tablets per day), and
9 Alprazolam⁵ (at least four (4) 2mg tablets per day). In addition, respondent prescribed to
10 Patient A either Oxycodone HCL-Acetaminophen⁶ 500mg/7.5mg, or Hydromorphone HCL⁷ 2mg.
11 From at least on or about July 30, 2012, through the end of the treatment period, respondent
12 added a prescription for Patient A for Carisoprodol⁸ (at least three (3) 350mg tablets per day).

13 14. A review of Respondent's medical records for Patient A shows diagnoses listed with
14 no plans to address them, and no rationale provided for actions taken.

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16 ² Conduct occurring outside the statute of limitations period is for informational purposes
17 only and is not alleged as a basis for disciplinary action.

18 ³ Controlled Substance Utilization Review and Evaluation System, compiled by the
19 California Department of Justice, Bureau of Criminal Identification and Investigative Services as
part of its Prescription Drug Monitoring Program.

20 ⁴ Hydrocodone Bitartrate Acetaminophen is a Schedule III controlled substance pursuant
21 to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to
Business and Professions Code section 4022.

22 ⁵ Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
23 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
section 4022.

24 ⁶ Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
25 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
section 4022. It is combined with acetaminophen in medications such as Percocet.

26 ⁷ Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety
27 Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions
Code section 4022.

28 ⁸ Carisoprodol is a Schedule IV drug under the Uniform Controlled Substances Act, and a
dangerous drug pursuant to Business and Professions Code section 4022.

1 15. Patient A's records contain no explicit treatment plan, with stated objectives, by
2 which the plan can be evaluated and/or adapted. Instead, Respondent appears to have changed
3 Patient A's pain medication periodically, without discussing or contemplating other treatment
4 modalities.

5 16. Respondent's medical records for Patient A also give no indication that Respondent
6 discussed with Patient A the risks and benefits of the controlled substances he prescribed, versus
7 other treatment modalities.

8 17. On or about February 12, 2013, Patient A was hospitalized for alprazolam
9 withdrawal. According to the hospital records, Patient A had been taking extra alprazolam due to
10 stressful situations at home, and ran out of the medication two to three days before admission.
11 Patient A was discharged from the hospital on or about February 13, 2013, with a prescription for
12 30 x alprazolam 2mg tablets.

13 18. After discharge, Patient A followed up with respondent on or about February 18,
14 2013. Respondent did not discuss with Patient A her misuse of alprazolam and/or address her
15 suboptimal management of her anxiety that led to that misuse. Respondent did not refer Patient A
16 back to her psychiatrist, but gave her a new prescription for 120 x alprazolam 2 mg tablets.
17 According to a CURES report for the relevant period, Patient A filled this new prescription on or
18 about February 20, 2013.

19 19. On or about February 23, 2013, there were 79 of the 120 alprazolam tablets
20 remaining.

21 20. Respondent committed repeated negligent acts in his care and treatment of Patient A
22 which include, but are not limited to:

- 23 (a) Failing to document a treatment plan;
- 24 (b) Failing to provide informed consent;
- 25 (c) Failing to address Patient A's misuse of alprazolam, modify treatment accordingly
26 and/or promptly refer back to psychiatry; and
- 27 (d) Failing to maintain accurate and adequate records.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Records)**

3 21. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
4 defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records
5 relating to the provision of services to Patient A. The circumstances are set forth in paragraphs
6 11 through 20, above, which are hereby incorporated by reference and realleged as if fully set
7 forth herein.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Medical Board of California issue a decision:

11 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 25674, issued
12 to Alyn Gary Anderson, M.D.;

13 2. Revoking, suspending or denying approval of Alyn Gary Anderson, M.D.'s authority
14 to supervise physician assistants and advanced practice nurses;

15 3. Ordering Alyn Gary Anderson, M.D., if placed on probation, to pay the Board the
16 costs of probation monitoring; and

17 4. Taking such other and further action as deemed necessary and proper.

18 DATED:

19 December 6, 2018

20 
KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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